

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSE CRUZ,

Plaintiff,

v.

SUPT. NANCY A. GIROUX, et al.

Defendants.

Case No. 1: 17-cv-175

MEMORANDUM ORDER

This action was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. Defendants filed a Motion for Summary Judgment [ECF #72] on June 4, 2019, and Plaintiff filed an opposition brief, several declarations and two oppositions to Defendants' statement of material facts, all of which were considered by Judge Lanzillo.

On February 5, 2020, Magistrate Judge Lanzillo issued a Report and Recommendation [ECF No. 86] recommending that (1) Defendants' motion as to Plaintiff's retaliation claim against Defendant Roth be denied, and (2) Defendants' motion in all other respects be granted, terminating Defendants Clark, Smith, Szelewski, Jones, Irwin, Sissem, Fait, Walters, Beddick, Shaw, Dganetz, Reed, Watson, and Anderson as defendants in the case. Plaintiff filed lengthy objections and a declaration in opposition to the Report and Recommendation, which mainly reiterated his previous opposition arguments to Defendants' motion, re-stated the allegations in his complaint, and added new allegations not part of this lawsuit. These arguments were fully reviewed by Judge Lanzillo when Plaintiff offered them in opposition to the motion for summary

judgment and were found to be wanting. Before making a final ruling, the Court observes that many of Plaintiff's arguments against summary judgment appear to be new claims that he has been retaliated against for the filing of the instant action, although he has not attempted to amend his Complaint to add these claims and now it is too late to do so. *See* n. 1 below. These claims are not relevant to this Complaint filed with regard to the claims of retaliation for different lawsuits and/or grievances prior to June 2017.

For example, Plaintiff argues in his Objections and elsewhere that Defendant Clark made specific reference to Plaintiff's filing this lawsuit in October 2017 after Defendant Clark became Superintendent, and according to Plaintiff's declaration in support of his Objections, said the following to Plaintiff: "If you drop the lawsuit, I will let you out the RHU. Nothing personal, is just business." Plaintiff contends that when he refused, Defendant Clark responded: "If that's the case I will make sure that you be in the RHU for a very long time. If you change your mind write me." ECF No. 88. Plaintiff has not made this allegation in an amendment to his Complaint¹ and has not even filed a grievance to this effect;² but, most important, such statements, even if true, are irrelevant to **this** case, which alleges retaliation prior to June 2017.

After *de novo* review of the complaint and documents in the case, together with the report and recommendation and all objections thereto, the following order is entered:

AND NOW, this 24th day of March, 2020;

IT IS ORDERED that the Defendants' motion for summary judgment [ECF No. 72] as to Plaintiff's retaliation claim against Defendant Roth is DENIED, and

¹ Plaintiff's failed attempts to amend his complaint did not include these allegations. ECF Nos. 30, 33, 55, 57.

² Although there is a grievance that specifically refers to Defendant Clark from this precise time period in the record, it does not allege a statement like this one was made at all. ECF No. 79, Ex. 10, p.61.

IT IS FURTHER ORDERED that Defendants' motion in all other respects is GRANTED.

IT IS FURTHER ORDERED that Defendants Clark, Smith, Szelewski, Jones, Irwin, Sissem, Fait, Walters, Beddick, Shaw, Dganetz, Reed, Watson, and Anderson are terminated as defendants in the case.

AND, IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on February 5, 2020 [ECF No. 86] is adopted as the opinion of the court.

/s/ Susan Paradise Baxter

SUSAN PARADISE BAXTER
United States District Judge